

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q66840	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 10/004,840	Filed December 7, 2001	
	First Named Inventor Kazuki SAKATA		
	Art Unit 2625	Examiner James A. THOMPSON	
<p style="text-align: center;">WASHINGTON OFFICE 23373 CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p> <p>Registration number 25,426</p>			
		<p style="text-align: center;">Signature <i>/Alan J. Kasper/</i></p>	
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		<p style="text-align: center;">November 19, 2007 Date</p>	

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q66840

Kazuki SAKATA, et al.

Appln. No.: 10/004,840

Group Art Unit: 2625

Confirmation No.: 7791

Examiner: James A. THOMPSON

Filed: December 7, 2001

For: SENSOR IN CAR WINDOW

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated August 17, 2007, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claim 1, the only independent claim pending in the application, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zerbe (EP 0934851 A2) in view of Choate (3,840,883) and Suzuki (5,034,772).

The foregoing rejection should be withdrawn as the claimed invention would not be obvious under the principles embodied in the *Examination Guidelines for Determining Obviousness Under 35 USC 103 in view of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.* (Fed. Reg. Vol. 72, No. 195, pp 57526-57535).

The Guidelines require the Examiner to fulfill the critical role of factfinder when resolving the Graham inquiries and must have a written record concerning the state of the art and the teachings of the references applied, as well as the explicit findings as to (1) how a person of ordinary skill would have understood the prior art teachings, (2) what a person of ordinary skill

would have known or could have done and (3) what such person would have reasonably expected to have been able to do in view of that knowledge.

Applicants submit that one skilled in the art having the three references before him or her would not have had any reasonable expectation to achieve the invention as claimed and would not have been led to the present invention due to (1) the failure of the prior art to teach critical elements of the invention and (2) the significantly different structures, applications and functions of the prior art that would preclude their combination.

Claim 1

The invention is defined as a sensor in a car window, comprising:

(1) a hood partitioned in consort with a car window and disposed within a vehicle compartment area; and

(2) a sensor main body having a lens, at least said lens projecting into and housed within the hood,

(a) wherein said sensor is operative to detect, through the lens, an object to be detected that is located in front thereof and outside of the vehicle compartment area,

(b) wherein a breathable dustproof filter is provided on a part of the hood.

The sensor is specified by a combined structure of a hood having a filter and a main body where the hood and main body have expressly defined locations with respect to a vehicle compartment area. As noted above with the emphasis provided by the underscored language, this structural relationship defines a sensor that is easily mounted within a vehicle compartment yet can detect objects outside of the compartment. Claim 1 requires that (1) the lens projects within the hood, (2) the lens is housed within the hood and (3) the object detected is in front of and outside of the compartment.

None of the seven rationales to support a rejection, as set forth in the Guidelines, are applicable to a finding that the above claimed invention would be obvious in view of the incompatible and divergent teachings of the cited art.

Zerbe

By the Examiner's own admission, there are two significant differences between the present invention and Zerbe. First, Zerbe does not disclose (1) that the lens is housed within the

hood and (2) that a breathable dustproof filter is provided on a part of the hood. Indeed, the lens does not project into the hood in Zerbe.

Specifically, the lens 8 is within the windshield. Thus, the lens is not within any hood and does not project into any hood. This is a significant structural difference, as would be understood by one skilled in the art. Moreover, the problem confronted by the present invention does not exist in Zerbe. Specifically, the sensor optics 8 do not experience the negative influence of the inner area of the automobile (dust, moisture, etc.), as explained at col. 3, lines 45-50. An expensive and complicated windshield arrangement must be provided, as shown in Fig. 1 of Zerbe.

Further, in the absence of the problem confronted by the Applicant, one skilled in the art would NOT want to add additional structures to Zerbe, as this would add cost and would only create additional problems for Zerbe with projections inside the vehicle compartment. In short, the two approaches are completely different.

Choate

Choate does not create or suggest a need for further modification of Zerbe to add a hood and achieve a structure as claimed. Choate merely teaches that a hood of a camera can house a lens (Fig. 1). The Examiner asserts that it would be obvious to modify Zerbe to have a hood on the basis of Choate. As already noted, there is no reason to add a hood to Zerbe or even consider them together. As to the latter point, the Examiner asserts that the two references would be considered together because they are “from the same field of endeavor,” namely the physical construction of camera systems. However, even if true, the Examiner does not provide a factual basis for adding a hood to Zerbe, as required by the Guidelines.

Indeed, the Examiner ignores the fact that Zerbe does not need a hood. One skilled in the art would not put a hood over a lens already protected by embedding in the windshield. Further, one skilled in the art would not take the lens out of the windshield, where the patent teaches it should be embedded. The teaching is clearly away from the suggestion by the Examiner.

Further, even if the lens is taken from the windshield, there is no basis for using a hood in view of the teachings of Choate? Choate concerns a hand held camera. The lens hood and cover indicated generally at 20 is associated with a 35mm camera. There is a hood member 30, which is of frustoconical configuration and has structures that adapt to attachment to a camera and a cover 32 that is pivotally supported on the hood by a wire frame assembly 34. How and why would such structure be used in Zerbe? The clear answer is that it would not be used in Zerbe.

In the Response to Arguments at page 2 of the Office Action issued on August 17, 2007, the Examiner agrees that the Zerbe reference is complicated but asserts that one skilled in the art would look to Choate for a more conventional and simpler design. The Examiner also asserts that the use of a “video camera with optics housed within the camera” would be a predicted and expected result. Finally, the Examiner states that “a lens embedded in the windshield would not be protected as well as a lens housed within a camera housing, as fact specifically taught by Choate.”

These arguments by the Examiner do not meet the requirement in the Guidelines for fact finding and a clear rationale, as they are not grounded in reasonable practice and reality.

First, as to using Choate to modify Zerbe, there is no commonality between the structures of the two references. Choate concerns a hand held 35mm camera with a hood, while Zerbe concerns a video sensor with a lens integrated into a windshield. One skilled in the art looking at the two structures would not be led in any way to modify Zerbe to (1) remove the lens from the windshield, (2) place the lens in an enclosure that is exposed to the atmosphere, and (3) place the camera body outside of the enclosure. There isn’t even a basis to attempt a modification of Zerbe (i.e., it isn’t even “obvious to try”) on the basis of the conventional camera of Choate.

Second, the invention is a specific arrangement of camera, lens and hood with respect to a windshield of a vehicle. The placement of optics within a camera has no relation to the placement of the lens projecting into and within a fixed hood. The hood in the present invention is a part of the structure in the interior of the vehicle and is partitioned with respect to the vehicle window. The hood is positioned so that the lens can detect an object located in front of the hood and window. The hood has a filter because of its mounting within the passenger compartment, so that contaminants from the compartment cannot deposit on the lens and cause distortion or blockage of an image to be detected by the camera.

Third, the Examiner’s assertion that an embedded lens is less protected than a separate lens having a hood has no basis in fact and is contrary to logic and common sense. The hood can be (and is intended to be) moved, so that upon movement the lens surface can be coated or damaged. The lens in Zerbe is always covered by a glass coating from the windshield that offers permanent protection.

Applicants’ invention offers a wholly new solution to a newly identified problem that the prior art never considered.

Even on the basis of the KSR decision by the Supreme Court, there must be some basis for combining the two references, one of which can be a teaching suggestion or motivation. Clearly, none of these is present.

Suzuki

The reference does not add anything to support the combination of Zerbe and Choate, or to refute the arguments against their combination, as presented above. The reference is merely cited for a filter.

Clearly, claim 1 is not obvious in view of the cited art. Further, the dependent claims are patentable at least due to their dependency from claim 1. The panel reviewing this rejection is respectfully requested to apply the Guidelines and conclude that all of the claims should be allowed.

Respectfully submitted,

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